

(d) Each district commander is delegated authority as follows:

(1) Authority, pursuant to CERCLA section 106(a), to determine an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, and to secure such relief as may be necessary to abate such danger or threat through the United States attorney of the district in which the threat occurs.

(2) Authority, pursuant to CERCLA section 109, relating to violations of sections 103 (a) and (b) pertaining to notification requirements, and section 122 pertaining to administrative orders and consent decrees.

(e) Subject to the provisions of Executive Order 12580, 49 CFR 1.46 (ff) and (gg), and paragraph (g) of this section, each Coast Guard official, predesignated as an On-Scene Coordinator, is delegated authority as follows:

(1) Authority, pursuant to CERCLA sections 104(a), 104(b), 104(c) and consistent with the National Contingency Plan, to remove or arrange for the removal of releases and threatened releases of hazardous substances, and of pollutants or contaminants which may present an imminent and substantial danger to the public health or welfare.

(2) Authority, pursuant to CERCLA section 104(i)(11), to take such steps as may be necessary to reduce exposure that presents a significant risk to human health, and to eliminate or substantially mitigate that significant risk to human health.

(3) Authority, pursuant to CERCLA section 106(a), to issue orders to protect the public health and welfare and the environment whenever that official determines that a release or threatened release of a hazardous substance from a facility may present an imminent and substantial endangerment to the public health or welfare or the environment.

(4) Authority, pursuant to CERCLA section 104(e), except section 104(e)(7)(C), to enter establishments or other places where hazardous substances are or have been generated, stored, treated, disposed of, or transported from to inspect and obtain records, reports, samples and information in support of the response functions delegated in paragraphs (d), (e)(1), (e)(2), and (e)(3) of this section.

(5) Authority, pursuant to CERCLA section 122, to enter into an agreement with any person (including the owner or operator of the vessel or facility from which a release or substantial threat of release emanates, or any other potential

responsible person), to perform any response action, provided that such action will be done properly by such person.

(f) Except for the authority granted in paragraphs (d)(1) and (e)(1) of this section, each Coast Guard official to whom authority is granted in this section may redelegate and authorize successive redelegations of that authority. The authority granted in paragraph (e)(3) of this section may only be redelegated to commissioned officers.

(g) The response authority described in paragraph (e)(1) of this section does not include authority to—

(1) Summarily remove or destroy a vessel; or

(2) Take any other action that constitutes intervention under CERCLA, the Intervention on the High Seas Act (33 U.S.C. 1471 *et seq.*), or other applicable laws. "Intervention" means any detrimental action taken against the interest of a vessel or its cargo without the consent of the vessel's owner or operator.

Dated: August 2, 1988.

P.A. Yost,  
Admiral, U.S. Coast Guard, Commandant.  
[FR Doc. 88-18223 Filed 8-10-88; 8:45 am]  
BILLING CODE 4910-14-M

### 33 CFR Part 117

[CGD7-88-08]

#### Drawbridge Operation Regulations; Great Canal, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

**SUMMARY:** At the request of the Tortoise Island Homeowners Association, the Coast Guard is changing the regulations governing the Tortoise Island drawbridge by requiring that advance notice of opening be given during certain periods. This change is being made because of a lack of requests to open the bridge at night. This action will relieve the bridgeowner of the burden of having a person constantly available to open the draw and still provide for the reasonable needs of navigation.

**EFFECTIVE DATE:** These regulations become effective on September 12, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mr. Walt Paskowsky, at (305) 536-4103.

**SUPPLEMENTARY INFORMATION:** On May 6, 1988, the Coast Guard published proposed rule (53 FR 16292) concerning this amendment. The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated May 20, 1988. In each

notice, interested persons were given until June 20, 1988 to submit comments.

#### Drafting Information

The drafters of these regulations are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

#### Discussion of Comments

Seven comments were received. Four supported the proposal with one suggestion that a radio be installed on the bridge for easier communication. The bridge operator and the Tortoise Island Gatehouse are both equipped with radio telephones monitoring channels 13 and 16. Other supporters suggested that this bridge should have the same operating hours as the downstream Mathers Bridge across the Banana River at Indian Harbor Beach. The operating hours will be the same, with full time bridge tender service available on Friday and Saturday evenings and evenings preceding federal holidays. Three objections were received citing the possible adverse impact on waterway users. The Coast Guard has carefully considered these comments. Since the bridge opened only 12 times at night during a recent 9 month study, these objections are not considered valid. The final rule is, therefore, unchanged from the proposed rule published on May 6, 1988, except for minor editorial revisions needed to clarify the exact hours during which advance notice is required.

#### Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the waterway is infrequently used at night. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

#### List of Subjects in 33 CFR Part 117

Bridges.

#### Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:



**PART 117—DRAWBRIDGE  
OPERATION REGULATIONS**

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. Section 117.285 is added to read as follows:

**§ 117.285 Great Canal.**

The draw of the Tortoise Island bridge, mile 2.6, shall open on signal; except that during the evening hours from 10 p.m. to 6 a.m. from Sunday evening until Friday morning, except on evenings preceding a federal holiday, the draw shall open on signal if at least 15 minutes notice is given.

Dated: July 29, 1988.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard, Commander,  
Seventh Coast Guard District.

[FR Doc. 88-18222 Filed 8-10-88; 8:45 am]

BILLING CODE 4910-14-M

**33 CFR Part 165**

[COTP Hampton Roads, Regulation 88-41]

**Safety Zone Regulation; Chesapeake Bay, off Fort Story, Virginia Beach, VA**

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

**SUMMARY:** The Coast Guard Marine Safety Office, Hampton Roads, VA is establishing a safety zone around a U.S. Navy offshore-onshore exercise in the area of the Chesapeake Bay off Fort Story in Virginia Beach, VA. The exercise is scheduled to begin August 14, 1988 and end August 30, 1988. The safety zone is needed to minimize the risk of collision between Naval exercise transfer hoses/vessels/equipment and other vessels. The area of this exercise is not in a main channel and not travelled by deep draft marine traffic. Consequently, the economic impact of this proposal should be minimal.

**EFFECTIVE DATE:** This regulation is effective from 7:00 a.m., e.d.s.t., August 14, 1988 to 7:00 p.m., e.d.s.t., August 30, 1988, unless sooner terminated by the Captain of the Port, Hampton Roads, VA.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant M. W. Carr, Port Operations Department, Coast Guard Marine Safety Office, Hampton Roads, 200 Granby Street, Norfolk, VA 23510-1888 at (804) 441-3284.

**SUPPLEMENTARY INFORMATION:** On August 1, 1988 the Coast Guard published a notice of proposed rulemaking in the Federal Register for

these regulations (53 FR 28890). Interested persons were requested to submit comments. No comments were received, therefore these regulations are being published without change.

**Drafting Information**

The drafters of these regulations are Lieutenant M. W. Carr, project officer, and Captain Robert J. Reining, project attorney, Fifth Coast Guard District Legal Staff.

**Discussion of Comments**

No comments were submitted. This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

**Economic Assessment and Certification**

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The economic impact should be minimal because the exercise area will not be in a main channel or in an area ordinarily travelled by deep draft traffic. In addition, the safety zone will be in a Naval restricted area regulated under 33 CFR 207.158 and vessels are prohibited from anchoring, trawling, crabbing, fishing, and dragging in this area. It is expected that recreational boaters and commercial fisherman in transit to or from the Atlantic Ocean will be the only persons affected by this safety zone and they will have to make only a small detour around the exercise area during the period the safety zone is in effect.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

**Final Regulations**

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

**PART 165—[AMENDED]**

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5.

2. Section 165.T0540 is added to read as follows:

**§ 165.T0540 Safety Zone: Chesapeake Bay, off Fort Story, Virginia Beach, VA**

(a) *Location:* The following areas are a safety zone: The waters within 250

yards of any offshore-onshore transfer hoses used or to be used during a seawater transfer exercise between the USNS OSPREY and the adjacent shoreline at Fort Story, Virginia Beach, VA; the USNS OSPREY; and any other vessels, buoys, moorings, and equipment associated with the deployment, retrieval, or marking of the offshore-onshore transfer hoses. (The USNS OSPREY is anchored at a position at approximately latitude 36°56.7' North, longitude 076°01.8' West.)

(b) *Regulations:* Except for participants in the joint Navy/Army multi-ship amphibious exercise, no person or vessel may enter or remain in the safety zone without the permission of the Captain of the Port or one of his designated representatives.

(c) *Effective dates:* This regulation is effective during periods when the offshore-onshore transfer hoses are being deployed and retrieved by the USNS OSPREY, between 7:00 a.m., e.d.s.t., on August 14, 1988, until 7:00 p.m., e.d.s.t., on August 30, 1988. The actual times that the safety zone will be in effect will be announced by marine broadcast Notice to Mariners.

Dated: August 8, 1988.

E.K. Johnson,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 88-18224 Filed 8-10-88; 8:45 am]

BILLING CODE 4910-14-M

**VETERANS ADMINISTRATION****38 CFR Part 4****Evaluations of Diplopia (Double Vision)**

AGENCY: Veterans Administration.

ACTION: Final rule.

**SUMMARY:** The Veterans Administration (VA) has amended its Schedule for Rating Disabilities to provide a new method for evaluating the degree of disability caused by diplopia (double vision). The amendment is necessary for compatibility between evaluation methods and new testing techniques. The effect of the amendment will be to provide VA adjudication personnel with an appropriate method for evaluating the results of the new testing techniques.

**EFFECTIVE DATE:** This change is effective September 12, 1988.

**FOR FURTHER INFORMATION CONTACT:** Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, Veterans Administration, 810



Vermont Avenue, NW., Washington, DC 20420 (202) 233-3005.

**SUPPLEMENTARY INFORMATION:** On pages 32318-21 of the *Federal Register* of August 27, 1987, the VA published proposed regulatory amendments on the evaluation of diplopia. Interested persons were invited to submit comments, suggestions or objections by September 28, 1987. It was also necessary to publish a correction to the original proposal which appeared on page 35610 of the *Federal Register* of September 22, 1987.

Comments were received from the American Optometric Association, Indiana University School of Optometry and the Veterans of Foreign Wars of the United States. The comments were generally favorable although a few suggestions were made.

One commenter suggested that the VA closely follow the impact of these changes on disability ratings to ensure that veterans were neither overrated nor underrated based solely on these changes. Although the VA does not plan to reevaluate all veterans rated for diplopia, we do intend to periodically check for trends in evaluation levels which may indicate the need for further adjustment of the schedule.

Another commenter did not agree with our rating of diplopia in various gazes in accordance with equivalent visual acuities and, in any event, suggested equivalent decimal units instead of fractions. When rating disability due to diplopia, contraction of visual field or visual acuity, the VA uses figures for visual acuity as a common reference point for establishing the level of visual impairment. This system of equivalent visual acuity is well-understood by our rating specialists and we do not believe that changing to an alternate method is necessary or appropriate.

The third commenter objected to the proposed evaluation method as conforming to that recommended by the American Medical Association which was more restrictive (conservative) than the former rating schedule. The commenter proposed an alternative evaluation method which essentially increased all of the VA's proposed

evaluations without offering any evidence to support the changes. We cannot agree with the suggested alternative evaluations in the absence of such supporting evidence although we would be happy to review any such material to see if additional refinement should be proposed in the future.

The same commenter suggested that a minimum rating of 30 percent be assigned when an eye patch is medically indicated to correct diplopia since it was equivalent to loss of use of an eye. The commenter also applauded the assignment of an equivalent visual acuity of 5/200 for diplopia in the downward gaze from 21 to 30 degrees but noted that the Goldmann Perimeter Chart was wrong.

As a matter of fact, it was the Goldmann Perimeter Chart that was correct and the table of equivalent visual acuities that was wrong. This was corrected on September 22, 1987, as noted above, when the equivalent visual acuity was corrected to read 15/200.

The wearing of an eye patch is an artificial and temporary means for improving a visual problem. As such it cannot be the basis for assigning a permanent increase in evaluation. It is a rule of long-standing in the VA rating schedule (38 CFR 4.77) that diplopia which is only occasional or correctable is not considered a disability.

These amendments are adopted as proposed. We appreciate the interest expressed by each commenter.

The Administrator hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The reason for this certification is that this amendment would not directly affect any small entities. Only claimants for VA benefits would be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulations, the VA has determined that this amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of \$100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Catalog of Federal Domestic Assistance Program numbers are 64.104 and 64.109.

#### List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: July 21, 1988.

Thomas K. Turnage,  
Administrator.

38 CFR Part 4, *Schedule for Rating Disabilities*, is amended as follows

#### PART 4—[AMENDED]

1. The authority citation of Part 4 continues to read:

Authority: 72 Stat. 1125; 38 U.S.C. 355.

2. Section 4.77 is revised to read as follows:

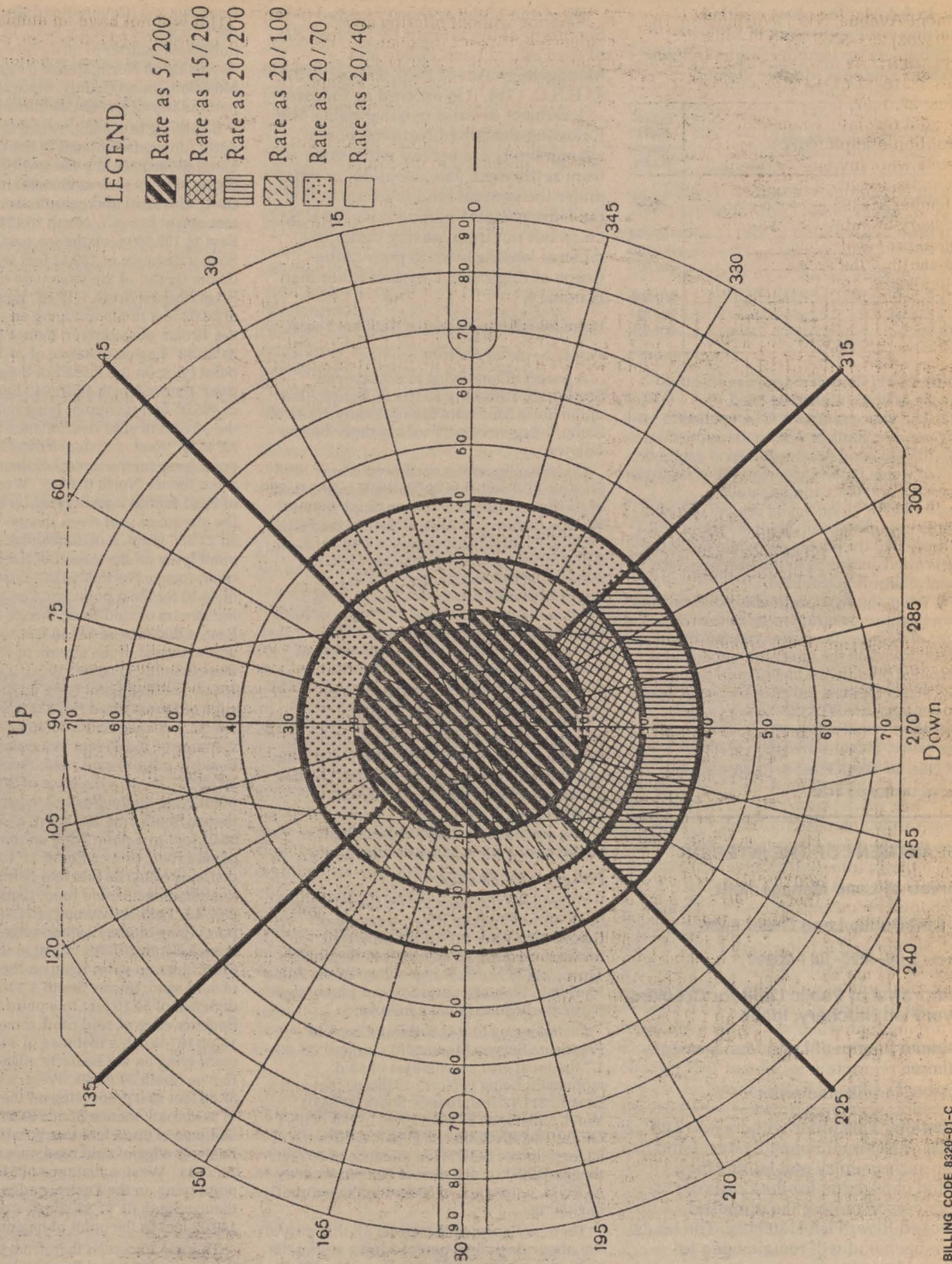
#### § 4.77 Examination of muscle function.

The measurement of muscle function will be undertaken only when the history and findings reflect disease or injury of the extrinsic muscles of the eye, or of the motor nerves supplying these muscles. The measurement will be performed using a Goldmann Perimeter Chart as in Figure 2 below. The chart identifies four major quadrants, (upward, downward, and two lateral) plus a central field (20° or less). The examiner will chart the areas in which diplopia exists, and such plotted chart will be made a part of the examination report. Muscle function is considered normal (20/40) when diplopia does not exist within 40° in the lateral or downward quadrants, or within 30° in the upward quadrant. Impairment of muscle function is to be supported in each instance by record of actual appropriate pathology. Diplopia which is only occasional or correctable is not considered a disability.

BILLING CODE 8320-01-M



Figure 2  
(Goldmann Perimeter Chart)





3. In § 4.84a, the chart entitled "Ratings for Impairment of Muscular Function" is revised to read as follows:  
6090 Diplopia (double vision).

Degree of Diplopia	Equivalent visual acuity
(a) Central 20°	5/200
(b) 21° to 30°	
(1) Down	15/200
(2) Lateral	20/100
(3) Up	20/70
(c) 31° to 40°	
(1) Down	20/200
(2) Lateral	20/70
(3) Up	20/40

Notes.—(1) Correct diagnosis reflecting disease or injury should be cited.

(2) The above ratings will be applied to only one eye. Ratings will not be applied for both diplopia and decreased visual acuity or field of vision in the same eye. When diplopia is present and there is also a ratable impairment of visual acuity or field of vision of both eyes the above diplopia ratings will be applied to the poorer eye while the better eye is rated according to the best corrected visual acuity or visual field.

(3) When the diplopia field extends beyond more than one quadrant or more than one range of degrees, the evaluation for diplopia will be based on the quadrant and degree range that provide the highest evaluation.

(4) When diplopia exists in two individual and separate areas of the same eye, the equivalent visual acuity will be taken one step worse, but no worse than 5/200.

[FR Doc. 88-18013 Filed 8-10-88; 8:45 am]

BILLING CODE 8320-01-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

#### 43 CFR Public Land Order 6686

[ID-943-08-4220-10; I-23990]

#### Withdrawal of Public Land for Crooked River Fish Hatchery; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

**SUMMARY:** This order withdraws 12.28 acres of National Forest System Land from surface entry and mining for a period of 50 years for the Corps of Engineers to protect the proposed Crooked River Fish Hatchery. The lands have been and will remain open to mineral leasing.

**EFFECTIVE DATE:** August 11, 1988.

**FOR FURTHER INFORMATION CONTACT:** Larry R. Lievsay, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706, 208-334-1735

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following-described National Forest system lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. ch.2), but not from leasing under the mineral leasing laws to protect the Corps of Engineers Crooked River Fish Hatchery;

#### Boise Meridian—Nezperce National Forest

##### Parcel 1—Adult Facility

A parcel of land lying in unsurveyed Section 25, Township 29 North, Range 7 East of the Boise Meridian, Idaho County, State of Idaho, being more particularly described as follows:

Commencing at the northwest corner of Section 30, Township 29 North, Range 8 East of the Boise Meridian; thence South 0°16'39" West, a distance of 2,879.37 feet to the POINT OF BEGINNING; thence South 3°14'35" East, a distance of 370.26 feet; thence WEST, a distance of 215 feet; thence SOUTH, a distance of 460 feet; thence North 67°14'57" West, a distance of 168.08 feet; thence North 51°50'34" West, a distance of 89.02 feet; thence North 8°27'44" West, a distance of 91.24 feet; thence North 30°15'23" East, a distance of 138.92 feet; thence North 52°25'53" East, a distance of 82.01 feet; thence North 3°34'35" West, a distance of 80.16 feet; thence North 23°44'58" West, a distance of 136.56 feet; thence North 4°45'49" West, a distance of 120.42 feet; thence North 71°20'08" East, a distance of 389.54 feet to the point of beginning.

The parcel of land above described contains 4.34 acres, more or less.

##### Parcel 2—Freezer Site

A parcel of land located on the left (west) bank of the Crooked River, westerly of County Road No. 121, in the projected northeast quarter of unsurveyed Section 36, Township 28 North, Range 7 East of the Boise Meridian, Idaho County, State of Idaho, more particularly described as follows:

Commencing at a U.S. Army Corps of Engineers Survey Monument marked "85-95-1," the local grid coordinates of said monument being y, North 13,096.82 feet and x, East 12,311.12 feet; thence South 89°34'04" West, a distance of 189.13 feet to the POINT OF BEGINNING; thence EAST, a distance of 80 feet; thence SOUTH, a distance of 50 feet; thence WEST, a distance of 80 feet; thence NORTH, a distance of 50 feet to the point of beginning.

There is *Excepted* therefrom all that part of the above described parcel 2 lying within the right-of-way of said County Road No. 121.

The parcel of land above described contains 0.09 of an acre, more or less.

##### Parcel 3—Acclimation Facility

A parcel of land located on the left (west) bank of the Crooked River, easterly of Forest

Road No. 233 (County Road No. 121), north of the Orogrande Landing Strip, in the projected northwest quarter of unsurveyed Section 30, Township 28 North, Range 8 east of the Boise Meridian, Idaho County, State of Idaho, more particularly described as follows:

Beginning at a point, which is located on north (downstream) end of the Orogrande Landing Strip. Said point is a U.S. Army Corps of Engineers monument marked "86-26-3," the local grid coordinates of said monument being Y, North 16,131.327 feet X, East 14,137.709 feet; thence south 61°31'33" East, a distance of 139.12 feet to a point lying on the thread of the stream on the Crooked River; thence North 1°19'56" East, a distance of 86.02 feet to a point lying on the thread of the stream of said river; thence North 24°26'38" East, a distance of 24.17 feet to a point lying on the thread of the stream of said river; thence North 44°01'04" East, a distance of 495.05 feet to a point lying on the thread of the stream of said river; thence North 22°46'57" East, a distance of 54.23 feet to a point lying on the thread of the stream of said river; thence North 0°47'45" West, a distance of 72.01 feet to a point lying on the thread of the stream of said river; thence North 16°27'36" West, a distance of 91.76 feet to a point lying on the thread of the stream of said river; thence North 3°54'02" East, a distance of 44.10 feet to a point lying on the thread of the stream of said river; thence North 7°55'58" East, a distance of 123.18 feet to a point lying on the thread of the stream of said river; thence South 90°00'00" West, a distance of 455.00 feet to a point lying on the Easterly edge of Forest Road No. 233 (County Road No. 122); thence South 35°40'07" West, a distance of 152.63 feet to a point lying on the Easterly edge of said road; thence South 20°22'35" West, a distance of 37.34 feet to a point lying on the Easterly edge of said road; thence South 1°35'28" West, a distance of 36.01 feet to a point lying on the Easterly edge of said road; thence South 11°40'25" East, a distance of 123.56 feet to a point lying on the Easterly edge of said road; thence South 8°07'48" East, a distance of 77.78 feet to a point lying on the Easterly edge of said road; thence South 2°07'16" West, a distance of 81.06 feet to a point lying on the Easterly edge of said road; thence South 4°14'11" West, a distance of 54.15 feet to a point lying on the Easterly edge of said road; thence South 17°02'16" West, a distance of 64.85 feet to a point lying on the Easterly edge of said road; thence South 30°06'49" West, a distance of 57.80 feet to a point lying on the Easterly edge of said road; thence South 40°21'52" West, a distance of 26.25 feet to a point lying on the Easterly edge of said road; thence South 24°28'11" West, a distance of 51.56 feet to a point lying on the Easterly edge of said road; thence South 61°31'33" East, a distance of 140.00 feet to the point of beginning.

There is *Excepted* therefrom all that part of the above described Parcel 3 lying within the right-of-way of said Forest Road No. 233 (County Road No. 122).

The parcel of land above described contains 7.85 acres, more or less.

The three areas described aggregate 12.28 acres in Idaho County.



2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

August 1, 1988.

J. Steven Griles,

Assistant Secretary of the Interior.

[FR Doc. 88-18161 Filed 8-10-88; 8:45 am]

BILLING CODE 4310-GG-M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 49 CFR Part 7

[OST Docket No. 43466, Part 7—

Reissuance]

RIN 2105-AA05

#### Public Availability of Information; Freedom of Information Act Regulations

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Final rule.

**SUMMARY:** This notice revises and reissues the Department of Transportation's regulations in 49 CFR Part 7 implementing the Freedom of Information Act (FOIA—5 U.S.C. 552). This is a complete revision of the regulations and includes changes necessary to implement the Freedom of Information Reform Act of 1986, the Uniform Freedom of Information Act Fee Schedule and Guidelines promulgated by the Office of Management and Budget, and, to some extent, changes necessary to meet requirements of Executive Order 12600, which imposes new requirements on government agencies with respect to the processing of requests under the FOIA for confidential business information. Revisions and additions to the regulations also take into account organizational changes since the last revision in 1975.

**EFFECTIVE DATE:** August 11, 1988.

**FOR FURTHER INFORMATION CONTACT:** Rebecca H. Lima, Chief, Freedom of Information Act Division, Office of the Assistant Secretary for Public Affairs, U.S. Department of Transportation, 400

Seventh Street SW., Washington, DC 20590, 202-366-4542.

**SUPPLEMENTARY INFORMATION:** No major revision of the Department of Transportation's regulations implementing the FOIA has been made since they were promulgated in 1975 (40 FR 7915, February 24, 1975). In the interim, a need has developed for more precise criteria to be used in processing FOIA requests and FOIA appeals; for codification of procedures used informally by the Department for notifying a submitter of confidential commercial or financial records of a request for these documents; and for additional appendices detailing procedures used by the Maritime Administration and the Research and Special Programs Administration, respectively, for the disclosure of information to the public. In addition, when the FOIA was amended by The Freedom of Information Reform Act of 1986 (Pub. L. 99-570, sections 1801-1804), substantial further revisions to parts of the regulations dealing with fees and fee waivers became necessary. Finally, the issuance of Executive Order 12600 (52 FR 23781, June 25, 1987), made it necessary for the Department to modify its proposed regulations pertaining to the processing of requests for confidential commercial information. Proposed regulations to respond to many of the needs for change were published in the *Federal Register* on October 17, 1985 (50 FR 42049). Additional proposed regulations were published in the *Federal Register* on November 6, 1987 (52 FR 42688). The final regulations have been changed in response to comments received concerning the two notices of proposed rulemaking.

Regarding appeals, the Department is reducing from 60 to 30 days the period in which an appeal must be submitted. When a denial is issued, the subject records are retained by the responsible FOIA officer until the appeal period expires, longer if there is an appeal, and much longer still if the appeal is denied. This retention is costly; as the number of FOIA requests has increased, the cost has become too burdensome. In our experience, it is not unreasonable to expect a requester to submit an appeal within 30 days.

#### Discussion of Comments

The Department received three sets of public comments in response to the notice of proposed rulemaking published on October 17, 1985 (first NPRM), and two sets of public comments in response to the supplemental notice of proposed rulemaking published on November 6, 1987 (second NPRM).

In response to the first NPRM, the Freedom of Information Clearinghouse (FOIC) objected on the general grounds that the proposed changes were unnecessary and had not been adequately justified. The Department disagrees. It is the Department's view that the preamble to the first NPRM included an adequate explanation and justification for the changes then proposed. In any event, in light of the enactment of The Freedom of Information Reform Act of 1986 and the issuance of Executive Order 12600, it is clear now that substantial changes in the Department's FOIA regulations are essential.

In specific comments concerning the first NPRM, FOIC objected to the proposed procedures for processing requests for business information, proposed § 7.57, for three reasons. First, FOIC said it is unclear when the notice and objection procedures apply. The Department agrees that some clarification is needed and has revised the first sentence of proposed § 7.57(a) to make it clear when the procedures apply. The wording of the final regulation also more closely conforms to that of Executive Order 12600.

The second objection by FOIC to proposed § 7.57 is that the procedures unnecessarily burden requesters by delaying the agency response. To meet this concern, FOIC recommends that the regulations of the National Highway Traffic Safety Administration (NHTSA), 49 CFR Part 512, be adopted for use throughout the Department. Under these regulations, a submitter must identify confidential information and justify confidentiality claims at the time the information is submitted to NHTSA. The Department does not anticipate that any significant delays will result from the codification of the business notification procedures. Procedures similar to those in proposed § 7.57 of the regulations have been used informally by the Department for some time. Also, while the NHTSA regulation has worked well, we are not prepared to adopt it for use by the entire Department. A significant portion of the business information submitted to NHTSA is from regulated parties such as automobile and tire manufacturers, and repeated dealings between NHTSA and members of regulated industries have demonstrated the value of pre-marking information and providing accompanying justifications in aid of evaluation of confidentiality claims. On the other hand, it is not clear that this approach would work as well throughout the Department. Since a significant amount of business information submitted to the